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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

JOHN L. SULLIVAN, TAX COMMISSIONER
OF THE STATE OF CONNECTICUT, ET AL.
Defendants-Appellants

VS.

UNITED STATES OF AMERICA
AND
LIEUTENANT STANLEY D. SCHUMAN, U.S.N., ET AL.
Plaintiffs-Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMICI CURIAE BRIEF IN SUPPORT OF JURISDICTIONAL STATEMENT OF DEFENDANTS-APPELLANTS

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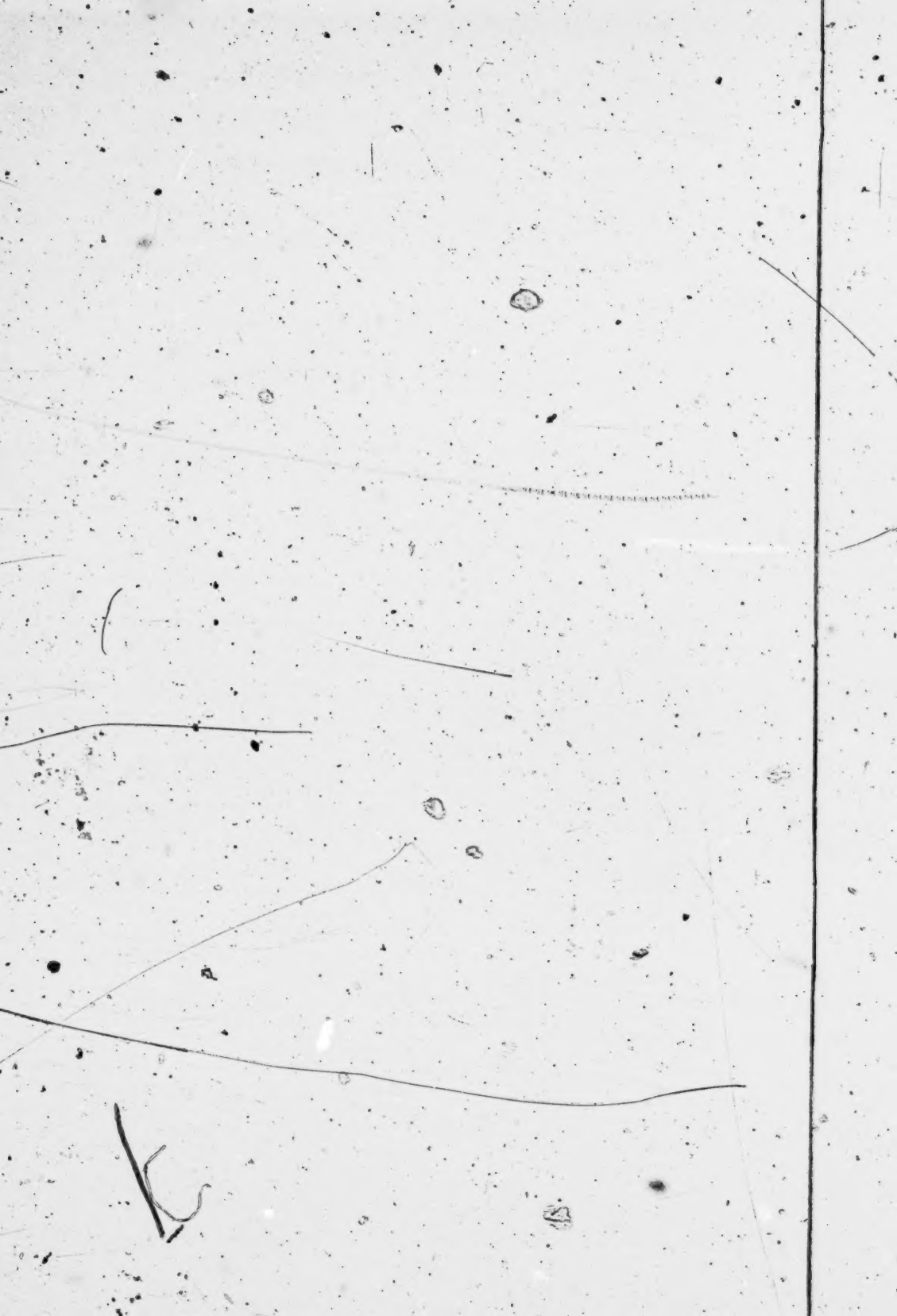

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

INTEREST OF AMICI CURIAE

This appeal involves a case of first impression, wherein the courts below declared that collection of Connecticut's sales taxes from non-resident servicemen present in the State solely pursuant to military orders contravened Section 514 of the Soldiers' and Sailors' Relief Act, 50 U.S.C. App. § 574, because under that Act Congress intended to exempt those servicemen from the payment of such taxes.

This brief of amici curiae is filed pursuant to Rule 42(4) of the United States Supreme Court and is pre-

sented for the State of Texas, sponsored by its Attorney General, and for the eighteen other undersigned States, sponsored by their Attorneys General, as shown below, and in which brief all have joined together and appear as amici of the Court. All of the undersigned states have sales and use taxes substantially similar to those of the State of Connecticut[1] and their interests are seriously affected by the decision of the appellate court below in this case. They would further show that such decision affects in all more than forty states and the District of Columbia, which have sales and use taxes; that Congress did not intend by the cited Soldiers' and Sailors' Relief Act to grant a tax exemption to such non-resident servicemen from these taxes, the exemption from which will cause immense and insoluble administrative burdens to the tax administrations and impair the revenues of the many states affected thereby to an incalculable extent. There are some two million servicemen presently serving within the various states in the United States, and in Texas alone there are at present approximately 206,377 servicemen, with a payroll of about $860,398,667.00, according to the 1968 Texas Almanac, indicating a substantial source of sales tax transactions. The legal questions presented are likewise so substantial that in the opinion of the undersigned plenary consideration by this Court is required.

ARGUMENT

The controlling issue involved in this case is whether Congress, by virtue of Section 514(1) of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. § 574), has denied to the states the power to levy a tax on the sale or purchase of tangible personal property within

[1]Except Michigan, which has a vendor type tax, the economic burden of which may be passed on to the vendee.

the state by non-resident servicemen. The Court of Appeals for the Second Circuit held that the state tax on the sale and purchase of tangible personal property within the State was a tax "with respect to personal property, or the use thereof" within the purview of Section 514(1). The Court further concluded that the spirit of the Soldiers' and Sailors' Civil Relief Act was to prevent the host state from imposing a tax on a non-resident serviceman inasmuch as it "improperly places the burden of supporting Connecticut upon their shoulders." That broad interpretation given Section 514(1) by the Court would indicate that any tax, even though the incidence falls upon a resident businessman, would fall within the immunity provided by Section 514(1) if it were subsequently passed on to the non-resident serviceman in connection with the purchase or sale of tangible personal property. Thus construed, cigarette taxes, gasoline taxes, and taxes on coin-operated machines, all of which have been historically excluded from the Soldiers' and Sailors' Civil Relief Act, are now brought into question. Secondly, inasmuch as most taxes based upon the sale or purchase of tangible personal property are computed by a percentage of the receipts of the seller (whether designated as retailer's occupation taxes, privilege taxes, transaction taxes or consumer's taxes) the interpretation placed on Section 514(1) of the Act creates an unreasonable burden upon the retailer inasmuch as he has a virtually impossible task of determining which servicemen are residents and which are non-residents and thus entitled to the immunity. Further, the Court of Appeals erroneously concluded that because a particular tax may be included within Section 514(1) that immunity from taxation would naturally follow, i.e., ("Section 514(1) eliminates jurisdictional grounds that otherwise could support taxation by the host state.") Merely placing

the situs of the use of the property to be outside of the host State does not necessarily preclude the levy of the tax on the purchase or sale of that property within the host state. Thus, this case should be reviewed to prevent uncertainty as to the standards to be applied to determine what type of tax is included within Section 514(1) and to remove the uncertainty as to whether including a particular tax within Section 514(1) creates an immunity and to avoid, if possible, the chaotic situation which arises as a result of the retailer being unable to determine to whom a tax immunity would apply.

Although Section 514 is read "with an eye friendly to those who dropped their affairs to answer their country's call," nevertheless any act infringing upon the state's authority to exact a contribution from those (residents or non-residents) to whom it extends its protection must be strictly construed. Consequently, for those transactions which clearly fall within the purview of Section 514 a liberal construction must follow. However, to determine whether or not a certain transaction was intended to be covered by the Act, a strict construction is required. For instance, the cases of *Dameron v. Broadhead,* 345 U.S. 322 (1953), involving a property tax, and *California v. Buzard,* 382 U.S. 386 (1966) involving the registration of a motor vehicle, were clearly areas covered by Section 514, which concern a judicial determination only of the nature and extent of the admitted immunity. The Court correctly gave a liberal interpretation favorable to the servicemen to the statutory scheme. However, in the present case the issue is whether Section 514 was designed to include within its immunization a tax unrelated to property taxes or motor vehicle registration but related only to the purchase or sale of tangible

personal property. Thus, to determine whether sales taxes are within the immunity provided by Section 514, a strict construction of the purported immunity is required, since the Court cannot assume without *specific language* that Congress intended to limit the state's authority to tax any transaction. A tax exemption is freedom from the burden of enforced contribution to governmental expense and maintenance and presupposes a liability, being applied only to a grant of immunity to persons or property which otherwise would have been liable to the taxation. 84 C.J.S. 411, Taxation, Sec. 215. Where the statute purports to grant an exemption from taxation, the universal rule of construction in that the particular provisions for exemption must be construed strictly against the party asserting the exemption in the absence of expressed legislative intent that the exemption is to be otherwise construed. The exemption must be clearly defined and founded upon plain language, without doubt or ambiguity. Whenever any such doubt arises, it is to be resolved against the exemption, as exemptions from taxation are not favored. 51 Am. Jur. 526-528, Taxation, Sec. 524; 84 C.J.S. 437-443, Taxation, Sec. 227; pp. 431-435, Sec. 225; citing numerous decisions of the United States Supreme Court as well as the other federal and state cases.

> "Courts are called upon to reconcile competing constitutional demands . . . that the power to lay taxes for support of state government shall not be unduly curtailed." See *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33.

We sincerely submit that a proper and careful reading of Section 514 reveals that all that it does is to treat the non-resident serviceman as remaining in his home state for purposes of taxation. It provides no

exemptions or immunities from taxation for the serviceman other than whatever benefits may follow as a result of being deemed to have never left his home state for the purposes of taxation. Except for determining the Congressional intent behind the term "licenses, fees or excises" as applied to motor vehicle registration, the criteria for determining whether transaction falls within Section 514 is not to determine, as the Court suggested, whether the tax requires the serviceman to contribute to the general revenue of the host state, but rather whether the tax would be lawful had the serviceman not left home but engaged in the transaction as a private citizen. For instance, had the serviceman not dropped his affairs and answered his country's call, he would have never left home and he would have not (1) brought personal property into the host State; or (2) used property within the host state; or (3) earned income within the host state; or (4) registered a vehicle within the host state—all areas of immunity within Section 514. Section 514, therefore, is designed to withhold from or deny to the host state the authority to tax a serviceman only in those instances where they would have no authority to tax had he not been on military orders. Consequently, the true judicial test to be applied to determine whether a specific tax is within the purview of Section 514 is to determine whether the tax would have been valid had it been applied to a private citizen who had maintained his residence and used his property only in his home state. In the area of taxes on sales or purchases of tangible personal property, had the purchaser, even though remaining a private citizen residing only in his home state, purchased tangible personal property in the host state (through mail order or by physically coming into the state), he would clearl have been required to pay the sales tax to the state in which

the property was purchased. Thus the authority of a state to levy taxes on sales or purchases is *not* dependent upon the criterion referred to in Section 514, i.e., the residence of the purchaser or the situs of the use and consumption of the property sold. The authority to exact such tax is dependent solely upon the authority to tax a transaction consummated within the state's borders regardless of the location of the purchaser or the location of the place at which the property is used. The Court has traditionally upheld the application of the similar taxes on sales even though the purchase and the only use of the property occur outside of the State: *International Harvester Co. v. Dept. of Treasury,* 322 U.S. 340 (1940); *Dept. of Treasury v. Wood Preserving Co.,* 313 U.S. 62 (1941); *McGoldrick v. Felt & Tarrant Mfg. Co.,* 309 U.S. 70 (1940), all of which involved a sales tax on purchases by out-of-state residents accepting delivery within the state; *McGoldrick v. Berwind-White Coal Mining Co.,* 309 U.S. 33 (1940), involving a sales tax on an interstate shipment to the state in which the sale occurred; *Pacific States Pipeline Co. v. Utah,* 372 U.S. 605 (1963), involving a sales tax on an interstate shipment from the taxing state; *Ford Motor Co. v. Beauchamp,* 308 U.S. 331 (1939), involving a tax on capital located out-of-state but used to produce business within the state.

The conclusion is inescapable that the immunity contained in Section 514 of the Soldiers' and Sailors' Civil Relief Act is based solely upon the servicemen's residence and the situs of his personal property and should be restricted to those taxes whose incidence are dependent upon the same criteria. A sales or use tax whose incidence is dependent upon the location of the sales transaction rather than the residence of the purchaser or the situs of the use of the property is clearly

not included within the statutory scheme. Should the term "taxation" include sales and use taxes, the application of Section 514 would not result in an immunity inasmuch as the transaction being taxed, i.e., the sale or purchase of tangible personal property, occurred within the borders of the state even though the purchaser remained at all times outside of the state and the property sold was used solely outside the state.

CONCLUSION

For the proper administration of justice and in the interest of the undersigned States whose rights are vitally affected by the ultimate decision of this Court, this Court should grant a writ of certiorari to the Defendants-Appellants in this case and correctly and finally dispose of the important issues presented to this Court.

Respectfully submitted,

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PROOF OF SERVICE

I, Kerns B. Taylor, one of the attorneys for Crawford C. Martin, Attorney General of the State of Texas, as one of the amici curiae herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of September, 1968, I served copies of the foregoing "Amici Curiae Brief in Support of Jurisdictional Statement of Defendants-Appellants" on the several parties thereto, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to each of the following attorneys of record in this cause:

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